

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LENA R. GUIDOTTI,)
v.)
CAROLYN W. COLVIN,) Civil Action No. 15-186J
ACTING COMMISSIONER OF)
SOCIAL SECURITY)

MEMORANDUM AND ORDER OF COURT

On July 16, 2015, Lena R. Guidotti ("plaintiff"), proceeding *in forma pauperis*, filed a Complaint against defendant Carolyn W. Colvin, the Acting Commissioner of Social Security, for review of a final decision denying her application for social security disability benefits.

Rule 4(b) of the Federal Rules of Civil Procedure provides that "[o]n or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal and issue it to the plaintiff for service on the defendant."

Rule 4(c) requires that a summons be served with a copy of the complaint and further provides that the "plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m)." At the time plaintiff filed her complaint, Rule 4(m) required that a defendant be served "within 120 days after the complaint is filed."¹

In this case, plaintiff never presented a properly completed summons to the clerk for signature and seal. Consequently, no summons was issued. Moreover, the 120-day period

¹ Effective November 1, 2015, Rule 4(m) was amended to decrease the time limit for service from 120 days to 90 days.

allowed for plaintiff to serve both the summons and complaint expired on November 13, 2015. As of the date of this order, nearly 2 months after the expiration of the allowable time, service has not been made.

Rule 4(m) provides that if a defendant is not served within the authorized time period, the court, either on motion or on its own after notice to the plaintiff, must dismiss the action without prejudice, or order that service be made within a specified time. However, if the plaintiff shows good cause for the failure, the court must extend the time for service for "an appropriate period."

Accordingly, the court will enter an order that, no later than **January 29, 2016**, plaintiff must: (1) present a properly completed summons to the clerk for signature, seal and issuance; and, (2) provide proof of service of the complaint and summons on defendant. Under no circumstances will the court extend the time for presenting a properly completed summons to the clerk, and, if plaintiff has not done so by January 29, 2016, this action will be dismissed without prejudice.

If by January 29, 2016, plaintiff has presented the summons to the clerk but has not yet been able to effectuate service on defendant, she may provide, in writing, good cause for not having made service by that date. If good cause is established the court *briefly* will extend the time for serving the defendant beyond January 29, 2016. However, if proof of service is not made to the court by January 29, 2016, or good cause is not established, this action will be dismissed without prejudice.²

² If plaintiff no longer intends to pursue this action, she also may file a notice of voluntary dismissal under Fed.R.Civ.P. 41(a)(1)(A) at any time prior to January 29, 2016.

An appropriate order follows.

ORDER OF COURT

AND NOW, this 6th day of January, 2016, pursuant to Rule 4(b) of the Federal Rules of Civil Procedure, IT IS ORDERED that no later than **January 29, 2016**, plaintiff Lena R. Guidotti shall present a properly completed summons to the clerk for signature and seal. Should plaintiff fail to do so by January 29, 2016, this action will be dismissed without prejudice; and,

IT FURTHER IS ORDERED that, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, no later than **January 29, 2016**, plaintiff also shall either provide proof of service on defendant of the complaint and summons in this civil action, or provide, in writing, good cause for not yet having effectuated service. Should plaintiff fail to provide proof of service, or to establish good cause for not having done so, by January 29, 2016, this action will be dismissed without prejudice.



Gustave Diamond
United States District Judge

cc: Lena R. Guidotti